

THE DISCHARGE IN BANKRUPTCY

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From an individual debtor' standpoint, one of the primary goals of filing a bankruptcy case is to obtain relief from burdensome debt. ⁽¹⁾ Relief is attained through the bankruptcy discharge, the purpose of which is to provide a "fresh start" to the honest debtor.

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The bankruptcy discharge varies depending on the type of case a debtor files: chapter 7, 11, 12, or 13. This Public Information Series pamphlet attempts to answer some basic questions about the discharge available to individual debtors under all four chapters including:

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What is a discharge in bankruptcy?

Under the federal bankruptcy statute, a discharge is a release of the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer required by law to pay any debts that are discharged. The discharge operates as a permanent order directed to the creditors of the debtor that they refrain from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.

Although a debtor is relieved of personal liability for all debts that are discharged, a valid lien (*i.e.*, a charge upon specific property to secure payment of a debt) that has not been avoided (*i.e.*, made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien.

When does the discharge occur?

The timing of the discharge varies, depending on the chapter under which the case is filed. In a chapter 7 (liquidation) case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the meeting of creditors). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court. In chapter 11 (reorganization) cases, the discharge occurs upon confirmation of a chapter 11 plan. In cases under chapter 12 (adjustment of debts of a family farmer) and 13 (adjustment of debts of an individual with regular income), the court grants the discharge as soon as practicable after the debtor completes all payments under the plan. Since a chapter 12 or chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing.

How does the debtor get a discharge?

Unless there is litigation involving objections to the discharge, the debtor will automatically receive a discharge. The Federal Rules of Bankruptcy Procedure provide for the clerk of the bankruptcy court to mail a copy of the order of discharge to all creditors, the United States trustee, the trustee in the case, and the trustee's attorney, if any. The debtor and the debtor's attorney also receive copies of the order of discharge. The order of discharge is not specific as to those debts determined by the court to be non dischargeable, *i.e.*, not covered by the discharge. The order of discharge informs creditors generally that the debts owed to them have been discharged and that they should not attempt any further collection. They are cautioned in the order that continuing collection efforts could subject them to punishment for contempt. Any inadvertent failure on the part of the clerk to send the debtor or any creditor a copy of the discharge order promptly within the time required by the rules does not affect the validity of the order granting the discharge.

Are all of the debtor's debts discharged or only some?

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy. Congress has determined that these types of debts are not dischargeable for public policy reasons (based either on the nature of the debt or the fact that the debts were incurred due to improper behavior of the debtor, such as the debtor's drunken driving).

There are 18 categories of debt excepted from discharge under chapters 7, 11, and 12. A more limited list of exceptions applies to cases under chapter 13. Generally speaking, the exceptions to discharge apply automatically if the language prescribed by section 523(a) applies. The most common types of non-dischargeable debts are certain types of tax claims, debts not included by the debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, and debts for certain condominium or cooperative housing fees.

The types of debts described in sections 523(a)(2), (4), (6), and (15) (obligations affected by fraud or maliciousness or certain debts incurred in connection with property settlements arising out of a separation agreement or divorce decree) are not automatically excepted from discharge. Creditors must ask the court to determine that these debts are excepted from discharge. In the absence of an affirmative

request by the creditor and subsequent granting of the request by the court, the types of debts set out in sections 523(a)(2), (4), (6), and (15) will be discharged.

A broader discharge of debts is available to a debtor in a chapter 13 case than in a chapter 7 case. As a general rule, the chapter 13 debtor is discharged from all debts provided for by the plan except certain long-term obligations (such as a home mortgage), debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. Although a chapter 13 debtor generally receives a discharge only after completing all payments required by the court-approved (*i.e.*, "confirmed") repayment plan, there are some limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. Such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control.

The scope of a chapter 13 "hardship discharge" is similar to that in a chapter 7 case with regard to the types of debts that are excepted from the discharge. A hardship discharge also is available in chapter 12 if the failure to complete plan payments is due to "circumstances for which the debtor should not justly be held accountable."

Does the debtor have the right to a discharge or can creditors object to the discharge?

In chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the United States trustee. Creditors receive a notice shortly after the case is filed that sets forth important information, including the deadline for objecting to the discharge. A creditor who desires to object to the debtor's discharge must do so by filing a complaint in the bankruptcy court before the deadline set out in the notice. Filing of a complaint starts a lawsuit referred to in bankruptcy as an "adversary proceeding." A chapter 7 discharge may be denied for any of the reasons described in section 727(a) of the Bankruptcy Code, including the transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; violation of a court order; or an earlier discharge in a chapter 7 or 11 case commenced within six years before the date the petition was filed. If the issue of the debtor's right to a discharge goes to trial, the objecting party has the burden of proving all the facts essential to the objection.

In chapter 12 and chapter 13 cases, the debtor is entitled to a discharge upon completion of all payments under the plan. The Bankruptcy Code does not provide grounds for objecting to the discharge of a chapter 12 or chapter 13 debtor. Creditors can object to confirmation of the repayment plan, but cannot object to the discharge if the debtor has completed making plan payments.

Can a debtor receive a second discharge in a later chapter 7 case?

A discharge will be denied in a later chapter 7 case if the debtor has been granted a discharge under chapter 7 or chapter 11 in a case filed within six years before the second petition is filed. The debtor will also be denied a chapter 7 discharge if he or she previously was granted a discharge in a chapter 12 or chapter 13 case filed within six years before the date of the filing of the second case unless (1) all the "allowed unsecured" claims in the earlier case were paid in full, or (2) payments under the plan in the earlier case totaled at least 70 percent of the allowed unsecured claims and the debtor's plan was proposed in good faith and the payments represented the debtor's best effort.

Can the discharge be revoked?

A discharge can be revoked under certain circumstances. For instance, a trustee, creditor, or the United States trustee may request that the court revoke the debtor's discharge in a chapter 7 case based on allegations that the debtor obtained the discharge fraudulently; the debtor failed to disclose the fact that he or she acquired or became entitled to acquire property that would constitute property of the bankruptcy estate; or the debtor committed one of several acts of impropriety described in section 727(a)(6) of the Bankruptcy Code. Typically, a request to revoke the debtor's discharge must be filed within one year after the granting of the discharge or, in some cases, before the date that the case is closed. It is up to the court to determine whether such allegations are true and, if so, to revoke the discharge.

In a chapter 13 case, if confirmation of a plan or the discharge is obtained through fraud, the court can revoke the order of confirmation or discharge.

May the debtor pay a discharged debt after the bankruptcy case has been concluded?

A debtor who has received a discharge may *voluntarily* repay any discharged debt. A debtor may repay a discharged debt even though it can no longer be legally enforced. Sometimes a debtor agrees to repay a debt because it is owed to a family member or because it represents an obligation to an individual for whom the debtor's reputation is important, such as a family doctor.

What can the debtor do if a creditor attempts to collect a discharged debt after the case is concluded?

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated. The discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

Can an employer terminate a debtor's employment solely because the person was a debtor or failed to repay a discharged debt?

The law provides express prohibitions against discriminatory treatment of debtors by both governmental units and private employers. A governmental unit or private employer may not discriminate against a person *solely* because the person was a debtor, was insolvent before or during the case, or has not paid a debt that was discharged in the case. The law prohibits the following forms of governmental discrimination: terminating an employee; discriminating with respect to hiring; or denying, revoking, suspending, or declining to renew a license, franchise, or similar privilege. A private employer may not discriminate with respect to employment if the discrimination is based solely upon the bankruptcy filing.

How can further bankruptcy information be obtained?

The Bankruptcy Judges Division, Administrative Office of the United States Courts, has other Public Information Series pamphlets on bankruptcy that are available by calling (202)502-1900. The Division, however, does not provide legal advice on bankruptcy filings. Specific questions about how to file for bankruptcy or advice concerning a bankruptcy case should be sought through competent legal counsel.

1. This Public Information Series pamphlet addresses the discharge only as it applies to individual debtors and joint debtors (husband and wife).